

The President's Perspective

Will Adoption of Rule 6.1 Make a Difference in North Carolina?

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Photo by Charlotte Observer/Yalonda James

On October 23, the North Carolina State Bar adopted Rule 6.1, Voluntary Pro Bono Publico Service. Should our Supreme Court approve the State Bar's petition, our state will join 44 other states and the District of Columbia in adopting Rule 6.1, derived from Rule 6.1 of the ABA's Model Rules of Professional Conduct.

The text of Rule 6.1 opens:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year.

Many who are reading this column will be asking why our state has waited until late 2009 to get on board; and others, what does the rule require of me?

Although I join in these questions, the question that has engaged me most is this one: Will the adoption of Rule 6.1 make any difference to the poor of North Carolina who need legal services?

Every lawyer reading this carries in his or her memory some demonstration of the power of pro bono service. I expect that the most fulfilling of those stories turn on your own participation, your own giving of your time and talent to the cause of someone whose needs only a lawyer could supply, but who could not afford your fee.

Even if it is late for North Carolina, 2009 is an especially apt time for us to reflect on the needs we have met – and those we must look in the eye. The enactment of Rule 6.1 provides the occasion for a frank reckoning of how we will deal with these conditions:

- 3 million people in North Carolina qualify for legal services help, approximately 30% of the population. National studies show that 80% of civil legal needs of poor people go unmet. The current economic crisis has increased the number of eligible clients and the overall need for legal aid assistance.
- There is one legal services lawyer for every 18,000 eligible citizens.
- Legal services lawyers turn away 8 out of 10 eligible clients with a civil legal problem. There is one legal services lawyer in North Carolina for every 7,000 persons living in poverty.
- The median annual household income for legal services clients served is \$11,000. The maximum annual income for a family of four qualifying for legal services is approximately \$24,000.
- The primary legal needs of those living in poverty are domestic violence, divorce, child custody, housing, employment benefits, and health care. Alongside medical services, the poor in our state need legal advice for the most critical events in their lives.

There can be no doubt that, for most civil controversies – no matter how serious – the poor of our state must turn to overwhelmed and understaffed legal services providers, or represent themselves.

On October 30, I participated in a conference hosted by the UNC Center on Poverty, Work and Opportunity at the UNC Law School, a concluding event for National Pro Bono Week. Four members of our state Supreme Court participated: Chief Justice Sarah Parker and Associate Justices Mark Martin, Patricia Timmons-Goodson and Robin Hudson.

Chief Justice Parker pointed to the rising number of pro se litigants and how many of them come to the courtrooms across our state without any familiarity for even the basics in procedures and substance of the law, and, to an increasing degree, without the ability to speak or read English. She described this circumstance as a "grave threat to our concept of equal justice under the law."

We are all proud of such initiatives as our Bar Association's 4ALL Campaign, launched by Janet Ward Black when she served as president, and Wills for Heroes, led by our Young Lawyers Division, that has provided wills and estate planning documents for 1,848 first responders and their spouses. But the crisis persists, and it grows.

To speak bluntly of what confronts us today, the only hope the vast majority of the unserved poor needing legal services have is a pro bono lawyer. More precisely, the only hope the poor have in late 2009 and for the foreseeable future is the willingness of a North Carolina lawyer to take on his/her legal matter without expectation of payment.

I imagine that a good many of those reading this column saw, or have heard reports from those who saw, the 2005 movie

"Walk the Line." One scene from the movie, I submit, is worthy of a long moment of reflection. ([Click here](#) to view scene; requires Adobe Flash Player 10)

A young Johnny Cash (played by Joaquin Phoenix, who was nominated for the Oscar for best actor in this role) is performing in Memphis in an audition cut short by a record producer. The producer makes plain the inadequacy of what passes for the standard offering of music, even by talented musicians. As Cash responds with a fierce rebuttal, the producer declares: You've got to "bring it home." He goes on to challenge Cash with the charge:

If you was hit by a truck and you was lying out there in that gutter dying, and you had one time to sing one song. Huh? One song that people would remember before you're dirt. One song that would let God know how you felt about your time here on Earth. One song that would sum you up.

How about us? What will it take, how dismal must become the plight of the unserved poor before we bring to reality the promise of equal justice? What will it take before we are willing to bring it home?

Some 23 years before he signed the Declaration of Independence, Benjamin Franklin spoke to this same subject, and in terms I think are a match for the scene from "Walk the Line." Long before Franklin emerged as a statesman, legislator and inventor, he helped establish the first hospital in Philadelphia and started the first public library in the colonies. In 1753, Franklin had befriended a fellow citizen whose injury had left him in a precarious state. Answering a thank-you note from the gentleman he had assisted, Franklin wrote:

As to the Kindness you mention, I wish it could have been of more Service to you. But if it had, the only Thanks I should desire is, that you would always be equally ready to serve any other Person that may need your Assistance, and so let good Offices go round, for Mankind are all of a Family.

For my own Part, when I am employed in serving others, I do not look upon myself as conferring Favours, but as paying Debts. ... I have received much Kindness from Men, to whom I shall never have any Opportunity of making the least direct Return. And numberless Mercies from God, who is infinitely above being benefited by our Services. Those Kindnesses from Men, I can therefore only Return on their Fellow Men; and I can only show my Gratitude for these mercies from God, by a readiness to help his other Children and my Brethren.

The first comment to Rule 6.1 provides: "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer."

In the mid-1980s, the Legal Aid Society of Mecklenburg County (now Legal Services of Southern Piedmont) asked our law firm to become their partners to pursue a class action on behalf of North Carolina's disabled citizens who were losing or being denied disability benefits in rapidly growing numbers. If we took the case, we would serve pro bono publico. We agreed to do so, and the case, cited most often as *Hyatt v. Shalala*, ran through the federal courts for some 20 years.

As one of the lawyers on the team from our firm, I set out to learn a new language for me - the arcana of disability standards and qualifications. My teachers were remarkable lawyers from Legal Aid. What I also learned was the truth of the expression: representing the disadvantaged "can be one of the most rewarding experiences in the life of a lawyer."

The friendships formed with my co-counsel at Legal Aid are professional and personal keepsakes. My admiration for all these lawyers and the skill with which they represent their clients could not be higher. Serving alongside them also provides me with a clear awareness that the statistics noted above are real: legal services lawyers can reach only a fraction of those whose needs for help are compelling. That our case was a class action, thus capable of benefiting many, is highly unusual. Nearly all of what is demanded today is one-on-one advice and counsel.

When I hear lawyers speak of their pro bono experiences, what comes through each time is their shared sense of fulfillment in reaching those whom they would have never served, or even known - except for volunteering. The "one-by-one" of their endeavors seems to mark each experience as intensely personal.

I have called upon our Public Service Advisory Committee, led by Tripp Greason (Winston-Salem) to guide our efforts in this noble cause. Their names appear below for reference and, I hope, your response.

In addition, we have already asked the legal services community to consider anew how we might best work together to enhance pro bono activity at this time. Specifically, I am looking to Ken Schorr (Legal Services of Southern Piedmont), George Hausen (Legal Aid of North Carolina), and Jim Barrett (Pisgah Legal Services) to continue their close alliance with us.

Martin Luther King, Jr. wrote and spoke often of the commandment to look after those who are left out or left behind - an apt description of many North Carolinians who live without meaningful access to our judicial system. For all the difficulty of the struggle, Dr. King's message carried a decided optimism: "The moral arc of the universe is long, but it bends toward justice."

Let's get on with our share of the bending.

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